

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENITO JULIAN LUNA,

Petitioner,

No. CIV S-04-0627 KJM GGH P

vs.

SCOTT KERNAN,

Respondent.

ORDER

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Petitioner is a state prisoner proceeding with appointed counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 1, 2011, prior counsel assigned to this case was relieved and new counsel was appointed, as it appeared petitioner's federal habeas petition was never filed even though the claims were exhausted several years ago in the California Supreme Court. On September 27, 2011, new counsel provided a status report indicating that the best way to address the statute of limitations issue would be for respondent to be served with the petition recently filed by petitioner. Respondent was served and filed a motion to dismiss on December 6, 2011. A hearing was scheduled for February 16, 2012, however the parties filed a stipulation to move the hearing to March 23, 2012. The court's law and motion calendar is on Thursdays, therefore the hearing was moved to March 22, 2012, at 10:00 am.

1 On March 14, 2012, the undersigned issued an order to show cause why the action  
2 should not be dismissed for failure to prosecute, noting that petitioner had not filed an opposition  
3 to the motion to dismiss even though the opposition was due on March 8, 2012. See Local Rule  
4 230(c). On March 14, 2012, petitioner filed a stipulation and proposed order to move the hearing  
5 to April 12, 2012. Therefore, the order to show cause is discharged and the hearing is moved to  
6 April 12, 2012. No further extensions will be allowed. Furthermore, petitioner's opposition to  
7 the motion to dismiss is due on March 26, 2012, and a reply, if any is due on April 5, 2012.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The order to show cause is discharged;  
10 2. The hearing is moved to April 12, 2012;  
11 3. Petitioner's opposition to the motion to dismiss is due on March 26, 2012, and  
12 a reply, if any is due on April 5, 2012.

13 DATED: March 16, 2012

14 /s/ Gregory G. Hollows  
15 UNITED STATES MAGISTRATE JUDGE

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